

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
10/19/2001

*** FILED ***
10/24/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

J. Pinter
Deputy

LC 2000-000190

FILED: _____

STATE OF ARIZONA
v.
CHARLES R BREED

JOHN P TATZ

DONALD W HARRIS
MESA CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since oral argument on 10/01/01. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings in Mesa City Court, and the memoranda and arguments of counsel.

Appellant was accused of committing on 05/14/99 within the City of Mesa two charges: Assault in violation of A.R.S. Section 13-1203(A)(1), a class 1 misdemeanor, and Threatening and Intimidating, in violation of A.R.S. Section 13-1202(A)(1), also a class 1 misdemeanor offense. This case proceeded to a bench trial on 10/22/99. Appellant was found guilty of both charges. Appellant was first sentenced 12/20/99. On that date Appellant received a suspended sentence with 36 months of unsupervised probation "from this date," 14 days in jail, a fine of \$1,710.00, restitution of \$11,441.14. Appellant filed a timely notice of appeal on 12/30/99. On 11/14/00, this Court, (the Honorable Michael O. Wilkinson) affirmed Appellant's conviction, but remanded the matter for re-sentencing in the Mesa City Court because of a restitution order which was insufficient as a matter of law. The case was then

returned to the Mesa City Court, and Appellant was re-sentenced on 02/16/01. Appellant received the same sentence and the trial judge made a specific determination that the victim's loss of earnings was the result of the assault and therefore, the total restitution amount was appropriate. The trial court ordered that sentence was suspended and Appellant was placed on unsupervised probation for 36 months from this date (02/16/01). Appellant again filed a timely notice of appeal in this case and claims that the trial judge erred in ordering a probationary term for 36 months commencing 02/16/01.

Appellant's argument is that the trial court erred in failing to give him credit when Appellant was re-sentenced on 02/16/01 for the time already served on probation, that is from the date sentence was originally imposed on 12/20/99. Appellant argues that Rule 6, Superior Court Rules of Appellate Procedure-Criminal, only pertains to a jail sentence imposed by the court. That Rule reads in part:

Execution of the sentence shall be stayed pending appeal when the defendant posts an appeal bond in accordance with the order of the trial court or when no bond is fixed and the appeal is taken on the defendant's own recognizance.¹

Appellant's argument is that the word "sentence" as contained in Rule 6 does not include suspended sentences, such as the probation which was ordered by the trial judge.

Appellant's arguments must fail as too restrictive a definition of the word sentence. A.R.S. Section 22-372 also provides that in Justice of the Peace courts the execution of the sentence shall not be stayed unless an appeal bond is posted. A.R.S. Section 22-372 also applies to police courts and the Mesa City Court.² More importantly, an expansive definition of the term sentence to include probation, fines, imprisonment, restitution, or a combination of all of these is warranted. A.R.S. Section 22-354 makes it clear that a court can sentence a defendant to pay a fine. Similarly, A.R.S. Section 22-352(A) provides:

¹ Rule 6, Superior Court Rules of Appellate Procedure-Criminal.

² See A.R.S. Section 22-425(B).

When the defendant pleads guilty or is convicted either by the court or by a jury, the court shall pronounce judgment on the plea or verdict. Sentence of fine, imprisonment, or both, as the case may be, may be pronounced on the judgment.

Therefore, this Court concludes that Appellant's sentence, which included 36 months of unsupervised probation, was stayed when Appellant filed his notice of appeal on 12/30/99. The trial court erred when it ordered that Appellant be placed on probation for another 36 months beginning on 02/16/01. Appellant served 10 days of unsupervised probation prior to his first notice of appeal filing on 12/30/99. Appellant is entitled to 10 days credit, and his probation effective date should have been 02/06/01. This Court further notes that 10 days elapsed from 02/16/01 to 02/26/01, when Appellant filed his second notice of appeal. This time period is also time for which Appellant should receive credit. Thus, this Court will remand this case back for re-sentencing, with instructions that Appellant is to be credited with 20 days time of unsupervised probation.

For all of the reasons previously explained,

IT IS ORDERED affirming the judgments of guilt, and remanding this case for re-sentencing regarding the term of probation to the Mesa City Court.